

Planning Board
Thursday, January 22, 2009, 7:00 P.M.
York Public Library

Call to Order, Determination of Presence of Quorum

Vice-chairman Lew Stowe opened the meeting at 7:00 and determined presence of quorum. Lew Stowe, Barrie Munro, and alternate Todd Frederick were present. Tom Manzi, Glen MacWilliams, and Dave Woods were absent. Todd Frederick was asked to vote. There were three people voting, which, Lew Stowe explained, would necessitate all three voting unanimously to have any motion pass. Town Planner, Christine Grimando, represented planning department staff. Patience Horton recorded minutes. The meeting was televised. The agenda was shifted slightly to accommodate two people who had come for specific ordinance amendments.

Field Change

Engineer Bill Anderson re-appeared (Jan. 8) on behalf of the Anchorage Inn's application with the expansion into the shoreland zone as the key issue. The State of Maine is clear there is no prohibition for what is being proposed, he said. Lew Stowe referred to a letter from law firm Perkins Thompson that backed up the statement. Barrie Munro said the board had been copied by email. Town Planner Christine Grimando read from that email. The primary approach has always been that when there is a perceived conflict between State and local law, the stricter law applies.

Christine Grimando said this is not a setback issue. Lew Stowe said when Glen MacWilliams took exception to the interpretation, the question was whether or not non-residential uses were a permitted use in the Limited Residential Shoreland Overlay District. The argument went that non-residential uses were not specifically permitted and were therefore prohibited. Christine Grimando said that the prohibition of non-residential activities is germane to Resource Protection Districts, but this is not a Resource Protection zone issue.

Attorney Peggy McGeehee of Perkins Thompson (Portland) summarized: the State's DEP setback guideline is 75 feet. York's is stricter, at 100 feet. The size of the shoreland zone is 250 feet. When Glen MacWilliams said there is a shoreland area of 250 feet, she continued, he thought the area and the setback were the same thing. That is where the confusion was. It was clarified by contacting the DEP. The pool enclave, at 200 feet, is beyond the setback requirement. The only regulation to look at is York's regulation, because the DEP has approved it. Lew Stowe commented that the shoreland exists on both sides because there is a wetland on the backside of the Anchorage property. Peggy McGeehee said she had worked on different permeantations, adding that the redesigned swimming pool layout will improve the environmental impact of the area by reducing the impervious ration with porous pavers.

Bill Anderson went over the plot plan, showing the 100-foot setbacks from the front and the northern wetland. He showed how the closest point the structures come into the 250-

foot shoreland arc. He also described the dune zone, which was long ago covered up with pavement, and in this case, part of the front lawn, too. The houses along Long Sands are perched up on the dune zone, which is so covered up, it is very difficult to distinguish, he said.

Motion: Barrie Munro moved to approve the plan modifications, as the proposal is for an accessory use to a permitted use and the structures are outside the 100-foot high water mark setback. Todd Frederick seconded the motion, which passed, 3-0.

Public Input--Open to the public to address any issue.

Lew Stowe opened the Public Input, and no one came forward to speak.

Public Hearings on Proposed Ordinance Amendments

Ord-1 Zoning	Definition of Building Height
Ord-2 Zoning	Definition of Variance
Ord-3 Accessory Dwelling	ADUs East of Route 1
Ord-4 Zoning	Small Wind
Ord-5 Zoning	Yard Sale Signs
Ord-6 Zoning	Permits and Violations
Ord-7 Supplemental Plumbing	Definition of Controlled System
Ord-8 Zoning	Shoreland Zoning Map Correction

Christine Grimando gave a PowerPoint overview, summarizing the features of the first six ordinance amendments offered for public hearing, Planning Board discussion and vote. The vote determines if the ordinance amendments should move ahead to the Board of Selectmen for their review, or not. Ordinance Items 7 and 8 originated in the office of the Community Development office and were presented by Ben McDougal.

Ord-1, Zoning, Definition of Building Height

This ordinance amendment addresses the necessity to streamline the definition of “Adjacent Grade” and make it consistent with existing language. Also there is additional definition about how building height is calculated when there are different sections at different levels. It has to do with the grades on different slopes. A graphic is part of the amendment.

Ord-2 Zoning--Definition of Variance

Regulatory language that is inconsistent and has no strict definition in its discussion of variance and frontage is cleaned up by this ordinance amendment. The change will make the language consistent with State Statute, she explained.

Ord-3 Accessory Dwelling--ADUs East of Route 1

Under current ordinances, a person living on the east side of Route 95 cannot build an Accessory Dwelling Unit on their property. The intention of the ordinance amendment is to increase the variety of buildings and uses on the east side of Route 1 within septic guidelines as overseen by Code Enforcement.

Ord-4 Zoning--Small Wind

The Small Wind amendment allows small windmills producing renewable energy as an accessory use in York. Windmills will have a small impact on abutters. There would be no more than one windmill per lot with the limit of 50 kW per hour. Currently the structure height limit in York is 35 feet, but windmills under 35 feet are not effective. There is also question about who would review the wind generators. Small wind generators are proposed for certain zones, only, largely west of the highway, but the high school zone is not included in that territory, and a windmill is greatly desired at the high school. Creating a lot ownership requirement of 2 acres inside the allowable zone, or 25 acres outside the allowable zone could solve that possible exclusion for the school. Windmill setbacks are commonly set at 1.1 times the height of the tower by windmill ordinance towns such as Cape Elizabeth, Damariscotta, Eliot, and Rockport, where the allowable height pole height is 80 feet. Christine Grimando displayed a comparison of the specifics of maximum height, setbacks, and power output for those towns.

Ord-5 Zoning--Yard Sale Signs

There are lots of violations and complaints about both the prohibition and enforcement of yard sale signs. With this amendment, if a person wants a sign, they'll go to Code Enforcement for a permit for the sign. There are standards for quantity, size, location, safety, and length of posting.

Ord-6 Zoning--Permits and Violations

This ordinance amendment establishes the rule that when multiple tenants are living at properties where the owner is in violation for existing unresolved code violations, the tenants will not be punished for the violations, as well. Christine Grimando had completed her introduction to the amendment items.

Ord-7 Supplemental Plumbing--Definition of Controlled System

Ben McDougal of Community Development discussed the definition of a controlled subsurface waste water system. If a system is replaced, the replacement has to meet criteria. The replacement system cannot serve more than 5 dwellings, which will not be subject to an increase in the number of rooms. All buildings tying into the new system must be owned by a single entity. The subsurface disposal system being replaced has to have been installed prior to May 1988, and the new system has to have a flow greater than or equal to 1500 gallons a day.

Ord-8 Shoreland Zoning Map Correction

Ben McDougal showed a map slide of an area that was accidentally delineated incorrectly. He also showed how the map looked before the error was made and passed by the voters in the November 2008 referendum. The original map, the correct map, will be offered for correction on the May 2009 referendum.

Other Ordinance Additions

York Community Development Director Steve Burns described two additional amendments developed at the request of the Board of Selectmen apart from the York Planning Board, but are of interest to the Planning Board and Planning Board followers. They are a Residential Growth Amendment and wireless communication devices for Water District Pump Stations.

The wireless devices, which are sometimes on a pole and sometimes attached to the roof of a water district pump station, will be free of cell tower regulations. In the photo slide of the communication device at the top of a pole, the device was not visible. The wireless systems connect different pump stations, Steve Burns explained. They are not telecommunication systems, but are necessary for water/sewer operations. The remote system is necessary when, in an emergency situation, water has to be pumped to or from the Kittery or the Kennebunk Water Districts.

The preview of the ordinance amendments was complete. Lew Stowe opened the **Public Hearing. On, Ord-3, ADUs East of Route 1, Alice Kruba**, who had presented the Accessory Dwelling Unit challenge to the Planning Board in the first place, said she supports the change Ordinance 3 for properties east of Route 1 that do not have sewer. There are not opportunities for people to rent to other people. Septic has to be met, she understands.

On Ord-4, Small Wind, Eric Hopkins of the York Energy Efficiency Committee, said his group is in favor and enthusiastically agrees with the terms of the Small Wind ordinance amendment. He asked to raise a discussion for the limit to 50kW of output. Christine Grimando thought perhaps 100kW could have municipal uses. Eric Hopkins thought the high school was a likely place for a windmill. It is in a windy place and it would take the energy bill off the table.

Barrie Munro raised the subjects of spoiled scenic vistas and noise. Christine Grimando answered windmills are not loud. The board discussed spot zones and though any municipal lot east of Route 1 would overrule making acreage requirements 25 acres or more. Barrie Munro pointed out that a substantive change was being proposed, but Staff said there was enough time in the ensuing public hearing process to for changes of this sort to be made. Eric Hopkins brought up guy wires, saying they might be helpful in raising and lowering towers possibly for making repairs. Barrie Munro commented that the ground part of the guy wire where the guy wire hits could not be to be inside the setback.

Vice-chairman Lew Stowe **closed the Public Hearing**. The Planning Board moved ahead to discussing Ordinance Amendments, planning to vote to move the amendments forward to the Board of Selectmen, as follows:

Ord-1 Zoning--Definition of Building Height

Barrie Munro said he did not understand some of the terms about rooflines, and wondered if the voters would not as well. Steve Burns suggested taking definitions and graphics from Version 10B of the Comp Plan.

Motion: Barrie Munro moved to approve the language for Ord-1, Definition of Building Height, with the addition of the 10B graphics to the amendment. Todd Frederick seconded the motion, which passed, 3-0.

Ord-2 Zoning, Definition of Variance

Discussion: The need for a definition of this minor variance had been raised by the Appeals Board to straighten out language about lot area and lot coverage currently not explained in the ordinance.

Motion: Todd Frederick voted to move Ord-2, Definition of Variance forward to the Board of Selectmen. Barrie Munro seconded the motion, which passed, 3-0

Ord-3, Accessory Dwelling, ADUs East of Route 1

Steve Burns said the Planning Board has worked on this amendment for Accessory Dwelling Units, while the Select Board has worked on Accessory Residential Units, affordable housing. This article simplifies the ordinances. Christine Grimando added that ADUs do not apply to conforming lots. Conforming lots anywhere are already privy to these units. The applicant property must have town sewer and water. The units must be attached to existing buildings and are 750 square feet, or less, in size.

Motion: Barrie Munro moved to approve the ordinance amendment, Ord-3, Accessory Dwelling, as submitted. Todd Frederick seconded the motion, which passed, 3-0.

Ord-4, Zoning, Small Wind

Christine Grimando said windmills are omitted from the Watershed Protection Zone because they, like many other structures, endanger water quality. Barrie Munro said the land off Bell Marsh Road would be easy to permit. The lots are big. If one is permitted per lot, it can't be a hazard to water quality. Everyone agreed that it made sense. Barrie Munro continued that the windmills should not be restricted to buildable area, but rather to the overall size of the lot. Christine Grimando said three acres is not net-buildable.

Barrie Munro said clearing for the windmill should be limited to the minimum amount necessary to the operation of the windmill. Clearing for the windmill could otherwise disguise harvesting of timber. Steve Burns said the ordinance should state minimum clearing according to the necessity for construction of the windmill. Barrie Munro discussed view shed, the visual impact. The windmill will not be in the view of any scenic resource. He asked about the salt marsh view from RT 91, saying one might have to look past the salt marsh to see the windmill. Would this constitute a problem? Christine Grimando answered that what is visual blight can be determined case by case. Barrie Munro said the value judgment has to be administered. Christine Grimando said the applicant would have to submit a visual analysis. Lew Stowe said the Planning Board does not have expertise about visual impact. He asked about historic vistas, and screening. He suggested moving the ordinance amendment forward to the Selectmen with the knowledge that the Planning Board would add language to it regarding visual impact.

Lew Stowe brought up the issue of setbacks. He said the language requiring requested permission should be struck. He asked where the formula for fifteen-foot blades on a 35-foot tower comes from. Christine Grimando said blade size is standardized. The taller the windmill, the less of an issue it is. Barrie Munro said he did not know the ratio of the length of the blades to the height of the tower in terms of power put out.

Christine Grimando said the State of Maine had established a rebate program for windmill owners. York does not want to disqualify people, and this ordinance does not. GEN-3 zone contains municipal properties that might satisfy the basic standards for windmills. Barrie Munro said shadow flicker is a concern. It is the light that flickers through the blades, and it cannot be measured in terms of the number of hours. Todd Frederick asked about keeping track of the abandonment of use, which Christine Grimando said would be reported, after which Code would take care of it. The board does not want windmills to have two uses for one pole.

Motion: Barrie Munro moved to advance Ord-4, Small Wind, as discussed and amended with the understanding that language about the scenic interference is not finalized. Todd Frederick seconded the motion, which passed, 3-0.

Ord-5, Zoning, Yard Sale Signs

Steve Burns said people would take their yard sale signs down when they are tired of people coming to their property long after the yard sale has ended to buy old stuff. The rules in this ordinance amendment provide the Town not to take the signs down.

Motion: Todd Frederick moved to move Ord-5, Yard Sale Signs, forward to the Selectmen. Barrie Munro seconded the motion, which passed, 3-0.

Ord-6, Zoning, Permits and Violations

Discussion: violations of permits will not be held against tenants living at the properties when the owner is in unresolved violation of code.

Motion: Barrie Munro moved to approve Ord-6, Permits and Violations. Todd Frederick seconded the motion, which passed, 3-0.

Ord-7, Supplemental Plumbing, Definition of Controlled System

Ben McDougal described the ordinance amendment provide requirements for controlled wastewater systems change from less to more restrictive.

Motion: Barrie Munro moved to send the article 7 forward to the Board of Selectmen as presented. Todd Frederick seconded the motion, which passed, 3-0.

Ord-8, Shoreland Zoning Map Correction

Discussion: There was no discussion.

Motion: Barrie Munro moved to forward Ord-8, Shoreland Zoning Map Correction. Todd Frederick seconded the motion, which passed, 3-0.

The eight ordinance amendments had been voted for moving on to the Selectmen.

New Business

Affordable Housing. Affordable Housing survey results.

Community Development Director Steve Burns and Planning Office Intern Kathryn Danylik presented statistical analysis of the 2008 Affordable Housing Survey, structured around townsfolk's thoughts and feelings about affordable housing.

Steve Burns said in accordance with the Comp Plan, housing polices were first established in 1999. In 2001, the first housing proposal, which came from the Chamber of Commerce, was presented to the Planning Board. The affordable housing figure had already been established at an ideal that 10% of all units permitted should be Affordable. In 2001, an affordable housing overlay district was creating. In 2004, the housing chapter was added to the Comp Plan, and in 2005, provisions for affordable housing were discussed. In 2006, an affordable housing project with the York Housing Authority was proposed, but did not get past the Board of Selectmen; Maine State manufactured home standards were not yet understood. Workforce housing became an issue in 2007, but it was premature. The Planning Board created a task force workforce/affordable housing in February 2008, and in November 2008, the voters approved a provision for workforce housing in the form of a zoning ordinance. Workforce and Affordable housing are not the same, Steve Burns said.

The 2008/2009 housing survey was initiated by the Board of Selectmen and assigned to the Planning Board to execute. Planning Board members Tom Manzi and Todd Frederick had worked with Staff. The survey went through much iteration, and an initial test survey was given to three-dozen people. It was fine-tuned. The final version was mailed out in Fall 2008, strictly to those who vote. They are the most active with the concerns of the Town, Steve Burns said. The results are characterized: 95% confidence and 4% margin of error. Fifty-five percent of the 1266 surveys sent out were returned, a total of 689 responses, an unusually high amount for a survey like this. One-fourth of participants had written comments, some throughout all the pages. The comments were sorted out and selected for review by Tom Manzi.

Statistician Katherine Danylik reviewed the results for the board. Twenty-two questions were asked. The public was asked to rate their feelings, from strong in disagreement, to strong in agreement, in terms of selecting 1-to-5. Some questions and results are enumerated below:

- Affordable housing is a high priority issue—strongly agree
- It is important to add 11 units a year—strongly agree
- Town should create opportunities for people who work in York to live in York—strongly agree
- Monetary assistance, as in vouchers or Section 8 certificates, should be offered by the Town—strongly opposed

- Town should enact policies for more affordable homes—strongly agree
- The units should be spread around town—strongly agree
- Conversion of existing buildings for affordable housing—strongly agree
- Increasing the amount of housing is more important than making the design compatible--largely opposed
- There should be an exemption from the growth ordinance opposed on the east of Maine Turnpike—73% strongly disagree

Questions about the demographics of those surveyed reveal that 93% own their homes. There is an average of 2 people in those home. Most of those surveyed have lived in York for more than 30 years. The average age of those who replied was over 60. The average income is \$80,000. Only 15% of those returning the survey were under 30.

The microphone went back to Steve Burns, who said the items that returned with a 3-1 (or greater) majority are the ones to pay most attention to. In those terms, some of the strongest answers include: Housing should be based on the conversion of existing buildings rather than newly create buildings (5-1); There is an opposition to monitory subsidies (3-1); There is a desire to comply with State mandates (3-1) and; The new housing should have a mix of building types (3-1). Other issues were largely neutral, he said. The idea of creating apartments as affordable housing is very popular.

Steve Burns intends to present the survey analysis to the Housing Authority and anyone who wants to see it. The answers will be made available to the public. All this should get the dialogue started. He plans to attend Planning Board workshops in the coming months. One or more ordinance amendments and Comp Plan amendment should be incorporated as a result of the survey. It would be important to know if people who don't live here want to.

In discussion, Barrie Munro said the average age and people per household surprised him. Todd Frederick said he was proud of the Town for sponsoring the survey, and proud of the voting public for answering. Lew Stowe said he was surprised at the aging majority. He said the idea of making apartments available for affordable housing had not occurred to anyone on the planning board. When land is a scarcity, the apartments come in very nicely. The practicability of apartments was part of the survey's feedback. At this point, Lew Stowe continued, it is important to get out into the public and find the follow-up to whatever has been gathered already. Steve Burns said two more surveys are coming up.

Katherine Danylik was asked how her experience with the survey might serve her, professionally. She answered that she was planning to use it as a master's dissertation, but time constraints had deterred that. Lew Stowe said the survey information could be used to develop ordinances. The presentation given by Steve Burns is especially insightful. Steve Burns said the survey has been intriguing. He hopes to do 6 to 12 presentations to different groups to see if people think it is realistic. The apartment concept and the conversion of a building are popular. All aspects of these results, design, fitting in, apartments, conversion, all aspects, are better than anything done previously.

Even the comments have been reviewed scientifically. Whereas questions are answered more positively, the written comments are more negative. He explained how the demographics for young adults are totally missing from the feedback. On a bell curve, that twenty-something part of the sloping curve doesn't exist. In the age profile response, there are no young people in York. Most are in the 60+ age group. Future surveys will reveal the age structure of the voters better. Missing the young community is a huge statement. He plans to center the next poll on the May vote that is ahead.

Public Hearing on Proposed Site Plan and Subdivision Regulations Amendment Site Plan and Subdivision Regulations § 5.5, Final Approval and Filing. Adds the requirement to file a Site Plan with the Registry of Deeds within 30 days of Planning Board Approval.

Christine Grimando said this Amendment does not go to the voters. With §5.5, Final Approval and Filing, the approved plan has to be returned to Community Development within 90 days. That will make sure loopholes in open-ended procedures will be closed. There are two different circumstances. In one, the Mylar has to be registered by the Registry of Deeds, and the second type does not need to be registered—but they both have to be registered with Community Development within 90 days, said Barrie Munro. That closes the open-ended-ness. Lew Stowe said without this requirement, the applicant who is in no hurry sometimes sits on the plan. Barrie Munro likened it to a contract between the Town and the Applicant. Every Mylar has to be returned to be signed. There is no final contract without it. It is Planning's responsibility to the applicant while remembering that in the end it is the responsibility of the applicant to submit a Mylar and to have it signed. .

Motion: Todd Frederick moved to accept Site Plan and Subdivision Regulation §5.5. Barrie Munro seconded the motion, which passed, 3-0.

The meeting ended. The time was 10:50.